IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 94 OF 2006

1. Vasant A. Mandelkar & 7 ors.] .. Petitioners

Versus

1. The General Manager, Naval Armament Department & 3 ors.] .. Respondents

Mr. Vinay Sonpad with Mr. S.G. Pillai for the petitioners.

Mrs. N.V. Masurkar with Mr. Y.R. Mishra for the respondents.

CORAM: F.I. REBELLO &
ANOOP V. MOHTA, JJ.

DATED: 27TH MARCH, 2006

P.C. :

. Rule. Heard forthwith.

2. The petitioners had approached this Court to quash and set aside the order passed by the Central Administrative Tribunal (CAT). They had approached CAT for the direction that they should be appointed as per appointment/letter dated 7th May, 1998 and further consequential reliefs. The CAT, by its impugned order, insofar as a candidate from the reserved list as there was a vacancy available to the 25 notified vacancies,

directed respondents to issue the letter of appointment. There were altogether 25 vacancies notified. Out of these, 23 vacancies were filled in. Two vacancies were available in the reserved category. None of the petitioners belong to the reserved category.

3. It is a case of the petitioners that if the O.M dated 8th February, 1982 and the Circular dated 27th February, 2001 are considered, then all those who were selected will have to be first appointed before fresh recruitment is done irrespective of whether they were selected against the notified vacancies or not.

4. On the other hand, on behalf of the respondents, it is pointed out that Select List has to be prepared in respect of notified vacancies only. A Reserved List is prepared only in the event, candidates who are selected, either are disqualified for some reason or could not take up appointments in which event, persons from the Select List will be offered appointment in order of their merit in the Reserved List. Once the vacancies are filled in, the List exhausts itself and those remaining in the Reserved List have no right to claim or to be considered against future vacancies as this might violate Articles 14 & 16 of the Constitution of India.

5. In the instant case, we are not considering a challenge by any of the petitioners to O.M. dated 8th February, 1982. What we are considering is the effect of the said order. A reading of the said O.M. would indicate that a List of selected candidates has to be drawn up. The List of selected candidates has to be put in two lists, one a Select List and the other, a Reserve List. There is no percentage of candidates to be included in the Reserved List which is the normal rule in such matters. In other words, if O.M. of 8th February, 1982 is considered, it means that all those other candidates who are successful will have to have their names included in the Reserved List. If paragraphs 3 and 4 of the O.M. are considered in this context and moreso, vacancies arising in the future, then it is possible to accept the contention on behalf of the petitioners herein that until and unless all of them are offered appointments, no fresh recruitment can take place. The only question is whether the petitioners, who now seek the invocation of extra ordinary jurisdiction of this Court, are entitled to a mandamus or direction as prayed for. In our opinion, considering the principles of Articles 14 & 16, it will not be possible for us to issue such a Writ. At the same time, many of these candidates who had expected to

be issued letters of appointment also at this stage cannot be told in the absence of the O.M. being withdrawn that they now cannot be considered because they are age-barred. This Court will have to balance the equities of the matter. In these circumstances, we propose to dispose of this Petition by issuing the following directions:

(i) Vacancies have already been advertised by advertisement dated 13th January, 2006. The advertisement was issued after the Petition was filed. In other words, when the matter was sub-judice before this Court. The petitioners, considering the contention urged by them and because they were age-barred, did not apply against the said vacancies.

(ii) As noted earlier, considering the equities, the petitioners are allowed to submit their application against those vacancies within 15 days from today.

(iii) If the petitioners otherwise qualify, their applications will also be considered alongwith the applications received from other candidates.

(iv) In case any of the candidates is age-barred, that will not stand in the way of the petitioners insofar as the present advertisement is concerned. In other words, this is a matter of a one-time exemption.

(v) The respondents to consider the applications of the petitioners, without age requirement and consider them on merits and if selected, to appoint them according to law.

6. Rule made absolute accordingly. There shall be no order as to costs.

Sd/-
[F.I. REBELLO, J.]

Sd/-
[ANOOP V. MOHTA, J.]